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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL BEVERLY,

Defendant and Appellant.

B269717

(Los Angeles County  
Super. Ct. No. YA091813)

APPEAL from a judgment of the Superior Court of Los Angeles County, Michael D. Abzug, Judge. Affirmed.

Gideon Margolis, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant Michael Beverly appeals his criminal conviction resting on his no contest plea to a Vehicle Code criminal offense. His appointed counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 that raises no issues and asks us to independently review the record. We invited defendant to submit supplemental briefing and he has, presenting contentions of error that in his view warrant reversal. In the paragraphs that follow, we briefly summarize the facts and hold defendant's contentions do not warrant reversal.

The Los Angeles County District Attorney filed a two-count information charging defendant with driving under the influence of an alcoholic beverage (DUI) within ten years of three other DUI offenses, in violation of Vehicle Code sections 23152(a) and 23550 (count 1);<sup>1</sup> and DUI within ten years of sustaining a prior felony DUI conviction, in violation of sections 23152(a) and 23550.5 (count 2). The charges were predicated on evidence that defendant had sustained several prior section 23152 convictions and was intoxicated on January 7, 2015, while driving approximately 60 miles-per-hour in a 40 mile-per-hour zone and straddling two lanes of traffic.

Following arraignment, defense counsel filed a motion for disclosure of any materials discoverable under *Pitchess v. Superior Court* (1974) 11 Cal.3d 531. The court granted the motion insofar as it sought review of the officers' personnel records for any evidence of dishonesty or fabrication of evidence/reports, and after in camera proceedings, the court stated in open court that "there are no so-called *Pitchess* hits."

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<sup>1</sup> Statutory references that follow are to the Vehicle Code.

On May 5, 2015, pursuant to an agreement with the People, defendant entered a no contest plea to count two of the information (the charge alleging DUI within ten years of sustaining a prior felony DUI conviction). The trial court accepted the plea, finding defendant had waived his constitutional rights freely and voluntarily, with a full understanding of the nature and consequences of the plea.<sup>2</sup>

Proceeding immediately to sentencing, the trial court sentenced defendant to the middle term of two years in prison as the parties had agreed. The court gave defendant 238 days of credit toward his sentence and imposed requisite fines and fees. Count 1 of the information was dismissed.

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<sup>2</sup> During the plea colloquy with the prosecutor and the court, defendant claimed his attorney would not listen to what he had to say and didn't talk to him "about what happened in the beginning of the case." After defendant made these statements, the trial court stated as follows: "Just one second, [defense counsel]. I want the record to be very clear. I've said it before and I'll say it again. I'm not going to take this plea if you keep telling me you haven't had enough time to talk to your lawyer. I won't be angry. I'm not upset. I'm just telling you that I have to be persuaded this is a voluntary plea. If you keep telling me you need additional time to talk to your lawyer about what happened, we're just going to set it for trial and good luck to you. [¶] So . . . I'm going to get off the bench one last time and we'll see what we see. Tell my clerk when you're ready to proceed and just let me know if he wants to plea or take the deal." When court proceedings resumed, defense counsel stated defendant would like to proceed and defendant entered his no contest plea to count 2.

Defendant thereafter filed a notice of appeal and requested a certificate of probable cause, arguing his trial counsel was constitutionally ineffective. The trial court denied the request for a certificate of probable cause.

In his supplemental briefing on appeal, defendant contends his trial attorney provided ineffective assistance of counsel in several regards: she acquiesced to delays before trial, including continuances because of the absence of the arresting officers in court; she “failed to bring forth the motion of due process, and discovery on my case” and “failed to file a motion for dismissal ordered by the Judge in Department 122”; and she did not bring alleged excessive force by the arresting officers to the trial court’s attention.

Because defendant is appealing after entry of a no contest plea without a certificate of probable cause, his ability to seek reversal is generally limited to claims of error in the denial of a motion to suppress evidence or alleged error in matters occurring after the plea that do not affect the validity of the plea. (Pen. Code, § 1237.5; Cal. Rule of Court 8.304(b); *People v. Richardson* (2007) 156 Cal.App.4th 574, 596; see also *People v. Collins* (2004) 115 Cal.App.4th 137, 148-49.) None of the contentions defendant raises in his supplemental brief concerns his sentence or issues arising after sentencing. We reject defendant’s contentions for that reason, and because they are meritless in any event on direct appeal (*Hill v. Lockhart* (1985) 474 U.S. 52, 58-59).

We have independently examined the record and are satisfied defendant’s attorney on appeal has complied with the responsibilities of counsel and no arguable issue exists. (*Wende*, 25 Cal.3d at 441; see also *Smith v. Robbins* (2000) 528 U.S. 259, 278-82; *People v. Kelly* (2006) 40 Cal.4th 106, 122-24.)

DISPOSITION

The judgment is affirmed.

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BAKER, J.

We concur:

KRIEGLER, Acting P.J.

KIN, J.\*

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\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.